

JUN 22 2004

# Vermont Hydroelectric Power Authority

112 State Street, Drawer 20  
Montpelier, Vermont 05620-2601

June 17, 2004

Vermont Sustainable Energy Coalition  
C/O Robert Walker  
Sustainable Energy Resource Group  
432 Ulman Road  
Thetford Center, Vermont 05075

Re: Response to June 10 letter to the VRPSAA

Dear Bob:

Thank you for writing concerning your coalition's interest in the work of the Vermont Hydroelectric Power Authority ("VHPA"). As you know, the VHPA has been created by statute, in 30 V.S.A. Chapter 90. As the newly appointed interim manager, I will respond on behalf of the VHPA. The VHPA's statutory goals are to continue the work of the Vermont Renewable Power Supply Acquisition Authority ("VRPSAA"), and take actions towards the purchase of hydroelectric facilities in the region. On May 5, 2004 the VRPSAA announced an agreement with two Canadian companies, Brascan Corp. and Emera, Inc., to work together towards acquiring certain hydroelectric facilities in the region. The VRPSAA's rights under its agreement with Brascan and Emera will be assigned to the VHPA, which has the powers necessary to conclude the transaction, should we be successful.

This letter will try to respond to your concerns by outlining the process and discussing the decisions that have brought the State to this point in time, discussing the benefits and risks of the proposed transaction, and outlining how the VHPA plans to move forward.

## Background and Process

The VRPSAA was created in the summer of 2003, and given the charge to investigate the feasibility of purchasing hydroelectric assets along the Connecticut and Deerfield Rivers, to prepare a proposal to purchase the facilities, including necessary negotiations, and to submit any proposal to the General Assembly for its consideration.<sup>1</sup>

Lexecon, Inc. was retained by competitive bid to assist in the research, analysis and study preparation. Six meetings open to the public (at least partially) were held between June 2003 and April 2004, two of which were expressly to take public input (one in Montpelier and one in Wilmington). The VRPSAA also met four times in executive session to discuss specific financial analyses which, if public, could put the State at a disadvantage *vis a vis* competitors in a public sale process, and to discuss partnership proposals.

Two public presentations were prepared, and submitted by the VRPSAA to the General Assembly on December 1, 2003. They are available at <http://www.leg.state.vt.us/reports/04power/power.htm> and were distributed publicly.

To facilitate continuation of the VRPSAA's work, the General Assembly passed a section in the Budget Adjustment Act providing additional funding and guidance.<sup>ii</sup> The guidance manifests support for the VRPSAA's work, and authorized the Secretary of Administration to enter into a Memorandum of Understanding ("MOU") with potential partners, requires sign-off on any final deal by the General Assembly, and requires that the VHPA pay property taxes to municipalities as if it were an entirely private entity.

A unanimous decision was made by the VRPSAA to investigate a public/private collaboration based largely on the analysis done by Lexecon, the public portion of which is cited above. The bottom line was that Vermont alone had a 7.5% chance of success acquiring the facilities. At the request of the VRPSAA, Lexecon investigated which commercial entities interested in the facilities would be interested in a collaborative venture. The result was a series of meetings between the VRPSAA and five potential private partners. In an executive session on April 30 the VRPSAA chose Brascan and Emera, again unanimously, after careful consideration of the presentations by the potential partners. Michael K. Smith, the VRPSAA chairman, and the Secretary of Administration, then began the process of negotiating a "term sheet" and then an MOU outlining the VRPSAA's collaborative relationship with Brascan and Emera. Neither the term sheet, nor the MOU are public documents, as they contain business terms and information that would be of competitive interest to others who also may be interested in the facilities. Both the term sheet and the MOU were presented to and approved by the VRPSAA prior to their signing. The MOU was signed on May 5, 2004.

The 2004 General Assembly took the next step necessary to move the process forward and created the VHPA, an entity with the powers to issue bonds, and to own, operate and manage any interest the VHPA may acquire in the facilities. The new statutory language includes a purpose and goals that guide the VHPA's activities.<sup>iii</sup> The language details the VHPA's authority, obligations and restrictions, and can be found at <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2004/bills/passed/H-767.HTM> in sections 101-103 of the bill.

### **Issues Raised in the June 10 Letter**

As is acknowledged in your letter, a lot of hard work has gone into this effort, and we are much closer to a successful acquisition today than several months ago. That acknowledgement is appreciated, and the VHPA continues those efforts as we move towards the next steps in the process.

The letter expresses one serious concern about how the VRPSAA and the VHPA are proceeding, and makes some analyses of the issues such as financing, power sales, revenue potential and public input. I would like to respond with explanations of the benefits, risks and some of the intricacies that I hope will clarify why certain choices were made. This response cannot go into much detail on financing or valuation issues, as the public release of such information would be detrimental to the chances for a successful acquisition.

The one serious concern is that the VHPA will not be a majority owner of the facilities. The VRPSAA had made public statements that it would pursue acquiring at least a 25% interest in the facilities, with the opportunity to negotiate for a larger stake in the future. There are some strong reasons for this measured approach.

First, the facilities' owner is currently in bankruptcy, and any actions affecting the facilities are under the bankruptcy court's jurisdiction. There has been no public announcement by the bankruptcy court, debtor-in-possession or the creditors as to if or when the facilities will be auctioned, or, if they are, whether the fossil units will be separated from the hydro systems, or whether they will be sold as a "package." Any work done towards an acquisition is therefore somewhat speculative. Lexecon's conclusion was that the state had a 7.5% chance of success acting alone. It is unusual for a governmental entity to make significant resource commitments to speculative business ventures, with no expectation of a return, which would have been the case here had the State moved forward alone, or in the lead.

For the VHPA to seriously pursue an acquisition of the hydro facilities alone, or as a majority partner, it would be required to expend significantly more resources than have been made available by the General Assembly. Investment bankers and transactional attorneys would have to have been retained months ago, in addition to the current consultants, just to keep us up-to-date and in the running. While the VHPA is obtaining its own expert assistance, having partners allows the VHPA to utilize the partners' expertise that would otherwise had to have been contracted for much earlier, at significant cost.

Second, Lexecon's analysis of the valuation, and the purported strong interest in the facilities by major players in the power generation business (suggesting a competitive auction) led to a conclusion that the winning bid would likely be in excess of reasonable bonding capability of the VHPA. A transaction purchasing the entire hydro systems would be significant in comparison to Vermont's existing bonded debt. One unambiguous determination by the VRPSAA, codified in the VHPA authorizing statute, is that financing for any acquisition will not impact on the State's credit rating.<sup>iv</sup>

Also, the tax code complexities of tax-free bonding would make it impossible for the VHPA to purchase 50% to 100% of the facilities, sell the output, and be able to maintain the tax-free status for the bonds. Tax-free financing can generally be used only for "public purposes," which likely do not include selling power wholesale to investor-owned or cooperative retail utilities, power marketers, or to all takers on the spot market. The market for municipal power sales is limited, and municipal utilities in the region have not indicated sufficient need for energy to justify the VHPA purchasing 50% or more of the facilities. (In fact, the expressed interest is less than 25% of the systems' capacities.) Backing bonds with the State's "general obligation" can also reduce financing costs, but doing so has serious implications for the State's bond rating, and would not be permissible under the language in 30 V.S.A. Chapter 90, establishing the VHPA. (See endnote iv.)

Third, an acquisition of less than 50% of the facilities still gives the VHPA more energy than is needed by Vermont electric utilities for at least the next eight years. Any energy not obligated under contracts between VHPA and Vermont utilities would have to be sold by contract to out-of-state utilities or on the wholesale market through ISO-New England. Being a seller in the current wholesale market, particularly one without significant experience that holds only one or two small (relatively) generating systems, entails risk. Many issues

arise: counterparty credit risk, operating reserves, operating capital (particularly since hydro facilities have a variable output, but financing payments are generally fixed), market price fluctuation, and others. The VHPA, acting alone, would have to purchase the expertise to manage these risks, either in house or contracted out, increasing its operating expenses.

Most of the cost the VHPA needs to recover by selling energy and other products will be financing cost. Should these facilities be auctioned, the winner will pay a market price based on the anticipated future revenue stream, which is based in large part on a forward price curve for the power market, which, in turn, is driven by the cost of natural gas. A state entity pays no income tax, and may have a lower cost of capital (although we do not know how other interested parties would finance, and therefore can not be certain a state entity has a significant advantage), but we would have to pay a price in the same range as any other purchaser.

One disadvantage to the VHPA, acting alone, is a lack of protection for our investment in times of lower than expected revenues or higher than expected costs. A substantial cash operating reserve is especially important for an entity owning only one hydroelectric system, as owning a large portfolio of geographically dispersed hydroelectric systems gives the owner the ability to spread out generation variations in one system with generation, and therefore revenues, from other systems. In an exceptionally dry year, for instance, the VHPA may see a decrease in revenue during the peak summer season (when prices are highest), but will still need to make payments to bondholders. This scenario may be unlikely, but the risk must be planned for, and mitigated.

In addition to the ownership percentage issue, it is evident that this potential acquisition is seen as a way to bring existing renewable resources to Vermont. At least two issues arise: First, Vermont utilities cannot be required to purchase power from these facilities, and will not purchase energy from the VHPA if it is not priced below other alternatives, as the utilities have an obligation to provide least-cost service to their customers. The VHPA cannot count on potential air quality, renewable energy or other benefits that may arise from the positive environmental attributes of existing hydro generation, we must have a plan that repays bonds with known sources of revenue. In short, increasing the VHPA's ownership interest to over 50% does not guarantee that energy from generation owned by the VHPA will be contracted to Vermont utilities, or that the VHPA will otherwise produce revenues that will flow to Vermont electricity customers.

The letter also makes the statement that "[i]f state guaranteed money is going to be used to acquire the dams, the state should control the distribution of their output." The VRPSAA and VHPA have as a primary goal the ability to control where its share of the output is sold, which does not necessitate functional control of the assets. The VHPA will first consider Vermonters' best interests when marketing its share, whatever the final percentage. It also is essential to understand that the State of Vermont is not providing tax revenue-based guarantees to any financing for these assets. Any bonds will be backed by the interest in the assets themselves and contracts for the sale of energy and other services.

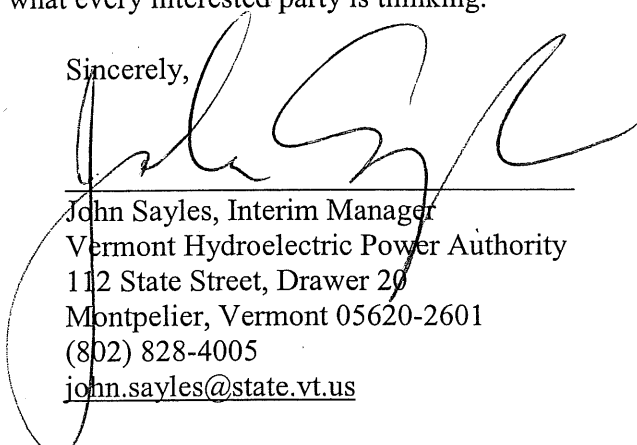
Strong citizen support was evident at the public hearings held on this initiative. Indeed, it is an exciting idea, and one that has merit, which is why so much work has gone into bringing it to fruition. It can be difficult, however, to explain in the press and at public forums the details of the benefits and risks, and the possible financial structure for the deal. This is an

area in which the VHPA needs to work harder. Also, the elected representatives appointed to the VRPSAA, representing a wide spectrum of Vermonters, both geographically and philosophically, unanimously agreed that the structure being pursued is the right one. Our collaborative venture agreement includes the right to negotiate for an increase in the VHPA's interest in the facilities at the time Vermont's utilities may have additional needs. The VHPA should, and will, continue to look for ways to increase the benefits from this project for Vermont's citizens. Opportunities are continually arising and we will be open to them.

One way to support an increase in the VHPA's interest in these facilities is to support the VHPA/Brascan/Emera collaborative venture, and to continue building support throughout the State for the idea that increasing the State's role in this project is a good investment now, and for the future.

I hope this discussion clarifies why and how the VRPSAA and VHPA are on the current path and moving forward in this manner. I would like to invite you, and all the members of the Vermont Sustainable Energy Coalition, to sit down with me, individually or as a group, and discuss these issues in more depth. While there may not always be consensus, it is useful to have a complete understanding of what every interested party is thinking.

Sincerely,



John Sayles, Interim Manager  
Vermont Hydroelectric Power Authority  
112 State Street, Drawer 20  
Montpelier, Vermont 05620-2601  
(802) 828-4005  
[john.sayles@state.vt.us](mailto:john.sayles@state.vt.us)

cc: Michael K. Smith  
VRPSAA members  
Harry Goldgut, Co-Chairman & CEO, Brascan Power Corp.  
Wayne Crawley, VP Corporate Development, Emera, Inc.  
Jim Coyne  
Prescott Hartshorne

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<sup>i</sup> Excerpts from Section 38 of Act 63, the 2003 Capital Bill

(a) A Vermont Renewable Power Supply Acquisition Authority shall be created to prepare due diligence and feasibility studies regarding the purchase of hydroelectric dams and related assets on the Connecticut and Deerfield Rivers and, with the consent of the governor, to enter into negotiations necessary to prepare a proposal for the purchase of the dams, to be submitted to the General Assembly for its consideration.

....

(c) The Authority shall prepare two studies as follows:

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(1) A study of the financial and technical issues involved in a purchase of the hydroelectric dams on the Connecticut and Deerfield Rivers; and

(2) A study of the principal policy issues implicated by such a purchase, if it were authorized, including:

(A) administrative and structural options for the ownership of the facilities and the sale and distribution of their power output, which might include ownership through the creation of a limited purpose state public power authority; by the Vermont Public Power Supply Authority; by one or more Vermont utilities; or by a public-private partnership.

(B) alternatives for disposition of the power output of the facilities, including wholesale and retail sales within and outside the state and use of the power within a portfolio to support advanced and renewable energy technologies, and the impacts of these alternatives on the credit-worthiness of the state and the ability of Vermont utilities to access investment capital on reasonable commercial terms.

(d) The Authority may consult with other state, municipal, or private entities . . . .

(e) The Authority may obtain, use, and develop commercial and financial information of a proprietary nature whose public release could jeopardize the position of the State of Vermont and its agents in negotiations or other efforts to present recommendations for the Legislature to purchase the facilities on advantageous terms. The Authority may also obtain, use, and develop information for the same purposes that is entitled to proprietary treatment to protect the commercial or trade secret interests of others. All information not exempt from public inspection under 3 V.S.A. § 317 shall be available to the public, including any reports and recommendations received by the Authority, which may be redacted as necessary to accomplish the purpose of this subsection.

. . . .

**ii Section 5 of Act 80, the 2004 Budget Adjustment Act.**

(a) There is appropriated from the general fund the sum of \$100,000.00 in fiscal year 2004 to the secretary of administration for costs of the Vermont renewable power supply acquisition authority for work regarding the purchase of all or part of the Connecticut River hydroelectric system consistent with the intent of Sec. 38 of No. 63 of the Acts of 2003. Up to an additional \$150,000.00 in general funds is hereby appropriated, contingent on emergency board approval, for use by the authority for this purpose in fiscal year 2005. Any funds appropriated and not expended or spending authority not used in fiscal year 2004 shall carry over in fiscal year 2005. The General Assembly hereby manifests its support for the work of the authority and authorizes the secretary of administration to negotiate a memorandum of understanding with a qualified partner seeking to bid on the assets of the hydroelectric system, setting forth potential partnership terms, including the commercial intent of the parties, approach to the bankruptcy or auction proceedings, possible coordination of supporting resources, and determination of ownership interests. No binding commitment may be made by the secretary on behalf of the state to enter into any partnership or purchase such assets without the prior approval of the General Assembly or the joint fiscal committee if the legislature is not in session. An ownership interest in any assets of any part of the hydroelectric system by the state or by any state authority or other state entity shall not alter the obligation of the owner to pay the full amount of the property taxes to any Vermont municipality in which the assets are located that would be due if the assets were entirely privately owned.

**iii Sections 101 of the 2004 Capital Bill, Findings, Purpose and Goals section.**

30 V.S.A. chapter 90 has a section stating finding, purpose and goals:

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§ 8051. FINDINGS, PURPOSE, AND GOALS

(a) The General Assembly of the state of Vermont finds:

(1) Potential exists to purchase an interest in hydroelectric power stations along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts.

(2) The General Assembly created the Vermont Renewable Power Supply Acquisition Authority (VRPSAA) in Sec. 38 of No. 63 of the Acts of 2003 to investigate such a purchase and the VRPSAA has taken actions towards that goal.

(b) Therefore, it is the purpose of this act to create an entity with the authority to finance, purchase, own, operate, or manage any interest in the hydroelectric power facilities along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire and Massachusetts, and to sell the electric energy under the control of the authority from those facilities at wholesale to authorized wholesale purchasers. The purchase and operation of an interest shall be pursued with the following goals:

(1) To promote the general good of the state;

(2) To stimulate the development of the Vermont economy;

(3) To increase the degree to which Vermont's energy needs are met through environmentally-sound sustainable and renewable in-state energy sources;

(4) To lessen electricity price risk and volatility for Vermont ratepayers and increase system reliability;

(5) Not to compete with Vermont utilities;

(6) To ensure that the credit rating of the state will not be adversely affected and Vermont taxpayers will not be liable should the project fail because of the failure to produce sufficient revenue to service the debt, the failure of a partner, or for any other reason; and

(7) To cause the project to be operated in an environmentally sound manner consistent with federal licenses and purposes.

<sup>iv</sup> 30 V.S.A. §8051 (b)(6): "To ensure that the credit rating of the state will not be adversely affected and Vermont taxpayers will not be liable should the project fail because of the failure to produce sufficient revenue to service the debt, the failure of a partner, or for any other reason; . . . ."

30 V.S.A. §8051 (1); "... No indebtedness shall be issued by the authority without the written approval of the state treasurer, which approval shall be given if, based upon his or her investigation, the state treasurer has certified that:

(A) none of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont has concluded that such indebtedness will be included as part of the state of Vermont's net tax-supported debt computation, as prepared by such rating agencies; or

(B) the financing structure and flow of funds for such indebtedness will not result in such indebtedness being counted as net tax-supported debt, or its equivalent, on the state of Vermont's debt statement, as prepared by any of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont."

30 V.S.A. §8058: "(b) In addition to any other statute affecting the authority, no bonds shall be issued under this section without the prior approval of the governor or designee. . . .

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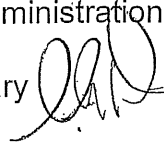
(d) No financing or security document, bond, or other instrument issued or entered into in the name and on behalf of the authority under this chapter shall in any way obligate the state to raise any money by taxation or use other funds for any purpose to pay any debt or meet any financial obligation to any person at any time in relation to a facility, project, or program financed in whole or in part by the issue of the authority's bonds under this chapter . . . ."



# AGENCY OF NATURAL RESOURCES

OCT 27 2006

To: Michael K. Smith, Secretary of Administration

From: Canute Dalmasse, Acting Secretary 

Date: 10/25/06

Re: Notice of Intent to Execute a Sole Source Contract

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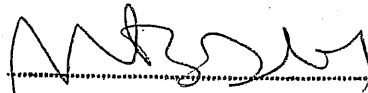
Pursuant to Bulletin 3.5.G.1, I am providing notice of intent to execute a sole source contract with Guidon Performance Solutions ("Guidon") for an amount not to exceed \$20,000, to provide consulting services to the Agency of Natural Resources to conduct one kaizen rapid process improvement event.

This contract has not utilized the Bulletin 3.5 modified bid procedure because Guidon has been determined to be the only contractor nationally with the experience in business process kaizen in state government, and Guidon has successfully conducted one kaizen event in Vermont in August, 2006. It is critical that this event be a quality learning event for ANR staff and management, to set the stage for future successful events.

This contract is critical to Phase Two of ReThinking ANR to show success to the public and the legislature in process improvement and inspire ANR staff to begin working towards a culture of continuous improvement.

Thank you for your consideration.

APPROVED

  
Secretary of Administration

Date: 11-13-06

OCT 30 2006

(Attach explanation sheets as necessary)

## I. GENERAL INFORMATION

Agency/Department: Agency of Natural Resources  
 Contractor: Guidon Performance Solutions  
 Address: 903 S. Rural Road, Suite 101-399, Tempe, AZ 85281

Federal ID or Social Security # VT Dept. of Taxes Business Acct. #: 20-3084783

Starting Date: 10/29/2006 Ending Date: 6/31/2007

Summary of contract or amendment: Consulting services to conduct kaizen rapid process improvement event.

## II. FINANCIAL INFORMATION

Maximum amount payable under contract: \$ 20,000 If Renewal, prior contract #: #

If amendment, amount of change: \$ Prior maximum amount: \$

Rate: \$ 3000/day Prior Rate: \$

Source of Funds: General Fund % Federal % Source: Other 100% Source: ECOS grant

Finance Codes: Program Code 50150

Vendor Number:

## III. SUITABILITY OF PERSONAL SERVICES CONTRACT

☐ Yes ☒ No Does this contract include any supplies, materials, parts, or commodities?  
☒ Yes ☐ No Does this contractor meet all three parts of the "ABC" definition of independent contractor?

(See Bulletin 3.5) If not, please indicate why this work is being arranged through a contract.

☐ Yes ☒ No Is agency liable for income tax withholding or FICA?☐ Yes ☒ No Should contractor be paid on the state payroll?

## IV. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract and to allow qualified businesses to compete for the work authorized by this contract. The agency has done this through:

☐ Formal bid or request for proposals ☐ Simplified bid process ☒ Other process (Sole Source)

## V. CONFLICT OF INTEREST

I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

☐ Yes ☒ No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this contractor was selected for improper reasons? (If yes, explain)

## VI. PAYMENT VERIFICATION

☐ Yes ☒ No I want the Financial Operations Division to verify that payments under this contract agree with its payment provisions. If I check "No," I understand that my agency must ensure that payments made are in accordance with the terms of the contract.

## VII. PRIOR APPROVALS REQUIRED OR REQUESTED

☒ Yes ☐ No This contract must be approved by the Attorney General under 3 VSA §311(a)(10) (over \$10,000).

( Yes X No Already performed by in-house AAG?)

☐ Yes ☒ No I request the Attorney General to review this contract as to form.

( X Yes No Already performed by in-house AAG, or counsel?)

☒ Yes ☐ No This contract must be approved by the Secretary of Administration.

## VIII. AGENCY HEAD CERTIFICATION

I have made reasonable inquiry as to the accuracy of the above information.

10/25/2006 \_\_\_\_\_ (John Sayles)  
 Date Agency or Department Head

3-16-11 \_\_\_\_\_  
 Date Approval by Attorney General as to form X under 3 VSA §311(a)(10)

3-26-07 \_\_\_\_\_  
 Date Approval by Secretary of Administration

White (Finance Copy)

Yellow (Agency Copy)

Pink (Budget &amp; Management Copy) Gold (Tickler Copy)

REC'D MAR 26 2007

STATE OF VERMONT

Contract # 11020

STANDARD CONTRACT FOR PERSONAL SERVICES

Change #     

1. Parties: This is a contract for personal services between the State of Vermont, Agency of Natural Resource (hereafter called the "State") and Guidon Performance Solutions with his principal place of business in 903 S. Rural Road, Tempe, Arizona 85281 (hereafter called "Contractor"). Contractor's form of business organization a limited liability corporation

a Corporation. Contractor is required by law to have a Business Account Number from the Vermont Department of Taxes.

Account Number is (# 20-3084783/not required by law).

2. Subject Matter: The subject matter of this contract is consulting services to conduct a kaizen rapid process improvement event.

3. Maximum Amount: In consideration of the services to be performed by Contractor, the State agrees to pay Contractor in accordance with the payment provisions specified in Attachment B a sum not to exceed \$ 20,000.00

4. Contract Term: The period of contractor's performance shall begin on October 29, 2006 and end on June 31, 2007.

5. Prior Approvals: If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

/Yes/ Approval by the Attorney General's Office required.

/Yes/ Approval by the Secretary of Administration required.

6. Amendment: No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Cancellation: This contract may be canceled by either party by giving written notice at least 30 days in advance.

8. Attachments: This contract consists of 7 pages including the following attachments which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C - "Customary State Contract Provisions",

a preprinted form (revision date August 10, 1995).

STATE OF VERMONT  
CONTRACT FOR PERSONAL SERVICES

ATTACHMENT A  
SPECIFICATIONS OF WORK TO BE PERFORMED

STATE OF VERMONT  
CONTRACT FOR PERSONAL SERVICES

Contractor will organize, facilitate and attend follow-up meetings as necessary to conduct one kaizen rapid process improvement event for the waste water division of the Department of Environmental Conservation at the Vermont Agency of Natural Resources.

ATTACHMENT B  
PAYMENT PROVISIONS

Contractor will present bills as work is completed at the rate of \$3000.00 per day, plus expenses, up to the maximum amount of this contract.

General Liability and Property Damage: With respect to all operations performed under the contract, the contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations  
Independent Contractors' Protective  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products/Completed Products Aggregate  
\$ 50,000 Fire Legal Liability

Automotive Liability: The contractor shall carry automotive liability insurance covering all motor vehicles, no matter the ownership status, used in connection with the contract, Limits of Coverage shall not be less than: \$1,000,000 Combined Single Limit.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that have been set to protect the interests of the state.

7. Reliance by State on Representations. All payments by the State under this contract will be made in reliance upon the accuracy of all prior written representations by the Contractor, including bills, invoices, progress reports and other proofs of work.
8. Records Available for Audit. The Contractor will maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of this contract and for three years thereafter for inspection by any authorized representatives of the State or Federal government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times, to inspect or otherwise evaluate the work performed or being performed under this contract.
9. Fair Employment Practices and Americans with Disabilities Act. The Contractor agrees to comply with the requirements of Title 21, VSA Chapter 5, Subchapter 6, relating to fair employment practices, to the extent applicable, and agrees further to include a similar provision in any and all subcontracts. Contractor also agrees to comply with the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs and activities provided by the Contractor under this contract. Contractor further agrees to include this provision in all subcontracts.

14. No Gifts or Gratuities. Contractor will not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this contract.
15. Copies. All written reports will be printed using both sides of the paper.

(end of customary provisions)

STATE OF VERMONT

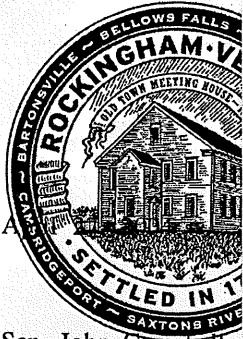
CONTRACT FOR PERSONAL SERVICES

ATTACHMENT D

OTHER PROVISIONS

To: Mike  
From: Betsy

4/15/04



Sen. John Campbell  
Vermont State House  
115 State Street  
Montpelier, VT 05633-5401

Gov Jim,

Thanks for your time  
yesterday

You might find this  
information helpful

Obie

Thank you again

Town of Rockingham  
Village of Bellows Falls

Office of the Municipal Manager

Town Hall, 7 Square  
PO Box 370  
Bellows Falls, VT 05101  
Voice: (802) 463-3964 Fax: (802) 463-1228  
Email: rbftnmgr@sover.net

Re: H.767 - Capital Construction Bill

Dear Senator Campbell:

I understand that you have been appointed to the Committee of Conference on the Capital Construction Bill, and I want to offer information that can assist Committee members with the "Rockingham language" found under Sections 92 through 97 of the Senate-passed version of the Bill.

In March of 2002, the Town voted overwhelmingly to establish the Rockingham Municipal Electric Utility and to authorize the acquisition of the Bellows Falls Hydroelectric Facility and associated distribution facilities. The community has worked tirelessly since that time to advance enabling legislation that would help us clarify that the Town - like the City of Burlington and the Village of Lyndonville - has clear authority to own portions of the Bellows Falls Hydroelectric Facility located outside of Vermont, and may own a generating facility larger than its own electric load and sell excess power generated by the facility. Our residents and businesses are united in their feeling that municipalization of the hydro facility will create a legacy for future generations by allowing the Town to stabilize its tax base, spurring economic development by providing low-cost electricity to Vermont businesses and residents, and giving local taxpayers a direct voice in utility decisions. But we need your help to make this happen.

We are making good progress toward municipalization as evidenced by our reaching agreement with US Gen New England, Inc. to enter into a purchase option on the hydro facility, and we are confident that our discussions with Green Mountain Power on distribution facilities will be resolved to our mutual satisfaction. Furthermore, we have reached an agreement with the Vermont Public Power Supply Authority to conduct necessary legal and engineering analyses and to explore alternate ownership strategies. Nevertheless, the "Rockingham language" as approved by the Senate is pivotal to the Town's ability to proceed toward municipalization with all of its powers and options intact.

I respectfully urge the Committee to approve Sections 92 - 97 of the Capital Construction Bill as passed by the Senate. Attached are a few questions and answers on this matter that should also be of help to you. If you have any further questions or concerns, please do not hesitate to contact me at any time.

Sincerely,

Shane O'Keefe, AICP  
Municipal Manager, Town of Rockingham/Village of Bellows Falls

Cc: Rockingham Selectboard

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**CAPITAL BILL (H. 767) – Sec. 93 as amended by Senate****Questions and Answers**

- **The Senate passed S. 28 with a ban on Rockingham's use of eminent domain to acquire the dam. What's the purpose of the amendment?**

The fundamental purpose of S. 28 was to give the Town of Rockingham the statutes it needed to acquire and own the dam. The Senate took the extraordinary step of banning eminent domain to assure that the Town and USGen negotiated a purchase at an agreed price and terms. In the year that has gone by since the Senate passed S. 28, an agreement has been reached at a price that satisfies USGen, the USGen creditors' committee and Rockingham. The agreement, which is long and complicated, is in its final stages and will be submitted to the Bankruptcy Court for approval within the next few weeks.

The deal gives Rockingham an option to buy the dam for \$72 million. The option as it's now written expires if Rockingham can't come up with the money by December 1, 2004. If it doesn't exercise the option, Rockingham has agreed not to assert any right to eminent domain for ten years.

This amendment adjusts S. 28 to conform to the agreement reached by the parties.

- **How does the amendment improve the bill?**

By preserving the status quo while the parties complete their agreement and submit it to the Court and by conforming statutory law to the commitments made by the parties.

- **Isn't the Legislature injecting itself into negotiations between Rockingham and USGen?**

Not at all. In the absence of House action on S. 28, Rockingham has eminent domain powers, particularly in the formation and conduct of business of a municipal utility. The citizens of Rockingham voted overwhelmingly to form a municipal electric department and to acquire the dam, so the Town could exercise those powers now. But instead, the Town and USGen have reached a deal.

The amendment would preserve the normal eminent domain powers only until the negotiated option is exercised. If the option is not exercised, the amendment would assure that Rockingham would live up to its commitment not to pursue eminent domain for ten years.

- **Will Rockingham's purchase of this dam interfere with the State's purchase of the other dams on the Connecticut River?**

No. If Rockingham exercises its option and the State invests in a fraction of all the other dams (as the State apparently contemplates doing), Vermont is likely to receive more hydro power than it would if this dam were available to the State and its co-investor. That's because Rockingham will use only about 15% of the dam's output, leaving the rest for Vermont utilities to deliver to their customers. If the State



buys, say, 25% of this dam, that will be the maximum that the State will be likely to earmark for Vermont.

(In fact, if Rockingham buys this dam, that will reduce the total amount the State needs to come up with for its purchase.)



MICHAEL K. SMITH, SECRETARY

STATE OF VERMONT  
**AGENCY OF ADMINISTRATION**

April 28, 2004

The Honorable Senator Vincent Illuzzi  
The Honorable Robert H. Wood  
Committee of Conference, H.767 Capital Construction, State Bonding, and the Dept. of Corrections  
State House  
Montpelier, VT 05602

Dear Senator Illuzzi and Representative Wood:

I am writing to respectfully request the Conference Committee's consideration in adding the following appropriation to H.767, the capital bill of the 2004 legislative session.

Sec. VERMONT HYDROELECTRIC POWER AUTHORITY;  
ONE-TIME APPROPRIATION

- (a) The sum of \$500,000.00 is appropriated to the Vermont hydroelectric power authority ("VHPA"), and the board of directors or manager of the VHPA is authorized to direct funds appropriated in this section to activities supporting the purposes for which the VHPA is created. Additional funds may be appropriated, contingent on emergency board approval, for use by the VHPA. Any funds appropriated and not expended in the current fiscal year shall carry over into the succeeding fiscal year. Should the VHPA not be established by the legislature in the 2004 legislative session, this appropriation shall be subject to reallocation by the general assembly in a future capital appropriations act.

We anticipate a brief window of opportunity in the near future when all or part of the Connecticut and Deerfield Rivers hydroelectric system may become available for purchase and wish to be sure that Vermont has the authority and funding to act in a timely manner in the best interests of Vermont's environment and citizenry.

Thank you for considering our input. Both John Sayles, Deputy Commissioner of the Department of Public Service, and I are available to discuss these points with you or the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Smith".

Michael K. Smith  
Secretary of Administration

cc: Sen. Mazza  
Rep. Pillsbury  
Sen. Campbell  
Rep. Allard  
Steve Klein, JFO



**State of Vermont**  
**Office of the Secretary**  
103 South Main Street, Center Building  
Waterbury, VT 05671-0301

[phone] 802-241-3600  
[fax] 802-244-1102

*Agency of Natural Resources*

MAR 16 2009

March 12, 2009

Neale Lunderville  
Secretary of Administration  
Pavilion Building, 5<sup>th</sup> floor  
109 State Street  
Montpelier, Vermont 05609

Re: Resignation from the Vermont Hydroelectric Power Authority

Dear Secretary Lunderville:

I am writing to let you know that I am resigning as interim manager of the Vermont Hydroelectric Power Authority ("VHPA"), effective March 20, 2009. I was appointed interim manager by your predecessor Michael K. Smith in June 2004, pursuant to 30 V.S.A. §8053(e). While the VHPA has not been active since early 2006 and the board voted at that time to discontinue all operations (which has been done), the statute states that "[t]he authority shall continue so long as it shall have any obligations or indebtedness outstanding and until its existence is terminated by law." The VHPA has no obligations or outstanding indebtedness (see attached reports), but its existence has not been terminated by law. My understanding is that there is current legislative language that would terminate its existence, and that both Susanne Young and Bill Griffin are aware of the language.

All of the appointed board members' terms have expired. The state treasurer and public service commissioner are statutory members.

I thought it would be prudent to officially resign the VHPA manager position because, as you know, I am leaving state service to take the position of CEO at the Vermont Foodbank.

Managing the VHPA was a fascinating experience, and one I am happy to have had. I have included a copy of the final report, which contains a great deal of information about the VHPA activities. All associated files have been moved to the public records archives. If you have any questions about the VHPA and its various activities, I would be happy to be a resource.

Sincerely,



John Sayles, Deputy Secretary

cc: Brad Aldrich, Jeb Spaulding, David O'Brien  
Richard Mallary, Fred Tiballi

 VERMONT



MICHAEL K. SMITH, SECRETARY

STATE OF VERMONT  
**AGENCY OF ADMINISTRATION**

June 8, 2004

John D. Sayles  
10 Parkside Drive  
Montpelier VT 05602

Dear John:

Pursuant to 30 V.S.A. § 8053(e), the Governor has conferred the authority upon me to appoint an interim manager for the Vermont Hydroelectric Power Authority ("VHPA"). The VHPA was created in 30 V.S.A. Chapter 90 as a body corporate and politic and a public instrumentality of the State. It is my pleasure to appoint you to the role of interim manager for VHPA, effective Tuesday, June 8, 2004.

As interim manager for VHPA, you will serve at the Governor's pleasure, with full authority to take all actions authorized under 30 V.S.A. Chapter 90 to protect and advance the interests of the State of Vermont, and to perform all duties of the position until such time as a board of directors is appointed, a permanent manager is hired, and that person assumes office.

Thank you for your willingness to assume this role in service to the State of Vermont.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Smith", written over a horizontal line.

Michael K. Smith  
Secretary of Administration

MKS/rrs

JAMES H. DOUGLAS  
GOVERNOR



State of Vermont  
OFFICE OF THE GOVERNOR

June 8, 2004

Michael K. Smith  
Secretary of Administration  
109 State Street  
Montpelier VT 05609-0201

Dear Mike:

Pursuant to 30 V.S.A. § 8053(e), I hereby appoint you to serve as my designee to appoint an interim manager for the Vermont Hydroelectric Power Authority ("VHPA"). You have the authority to act as my representative in this matter.

Thank you for your willingness to assume this role in service to the State of Vermont.

Sincerely,

A handwritten signature in black ink, appearing to be "JH Douglas", written over a circular stamp or seal.

James H. Douglas  
Governor

JHD/rrs

## **CONFIDENTIAL MEMORANDUM**

**To: Mike Smith**

**From: John Sayles**

**Re: Compensation for Interim Manager of VHPA**

**Date: June 8, 2004**

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Below is my proposal for compensation as Interim Manager of Vermont Hydroelectric Power Authority ("VHPA"), as set out in 30 V.S.A. Chapter 90. The VHPA will be created when the Governor signs the 2004 Capital Bill.

We have discussed my being named Interim Manager, and that it would be appropriate for me to have additional compensation for those duties. I will continue in my present position as Deputy Commissioner of the Department of Public Service, and will work both positions subject to the terms of a Memorandum of Agreement between the Agency of Administration and the DPS. (A draft MOA is attached.)

The duties associated with being Interim Manager are difficult to fully define right now. The VHPA will have to be "organized," with accounts to handle funds to pay its payroll, consultants and expenses. Initially, it will need to enter into a contract to continue the relationship with Lexecon Consulting, and will seek to hire a financial advisor, and perhaps retain legal counsel. There must be systems and controls to receive the appropriated funds and pay bills and expenses.

I expect that as Interim Manager I will be the only VHPA employee, and that the time devoted to the duties will be highly variable, depending on how the process unfolds. There may be periods of intense activity, and period of relative inactivity, which could last weeks. Therefore, I propose an hourly compensation, with an expiration and renegotiation period to reassess when the process is (hopefully) more clearly defined.

I propose to keep time sheets for all hours devoted to VHPA business, down to the quarter hour. This will be paid monthly, on the last day of each calendar month, starting after official appointment. The rate will have to take into account whether I will be paying self-employed taxes, or whether the VHPA provides withholding and payroll services (I am investigating how other SOV entities do this.)

The established level of compensation will be effective until the earlier of the Memorandum of Agreement's expiration or November 1, 2004. At that time the compensation will be renegotiated, if necessary.

**MEMORANDUM OF AGREEMENT  
BETWEEN  
AGENCY OF ADMINISTRATION  
AND  
DEPARTMENT OF PUBLIC SERVICE**

**THIS MEMORANDUM OF AGREEMENT** is made this \_\_\_\_\_ day of June 2004, by and between the Agency of Administration ("AOA") and the Department of Public Service ("DPS"):

**WHEREAS**, the Vermont Hydroelectric Power Authority ("VHPA") has been created in 30 V.S.A. Chapter 90 as a body corporate and politic and a public instrumentality of the State; and

**WHEREAS**, pursuant to 30 V.S.A. §8053(e), the Governor or his designee may appoint an interim manager for the VHPA, who shall serve at the Governor's pleasure with full authority to take all actions authorized under 30 V.S.A. Chapter 90 to protect and advance the interests of the state of Vermont; and

**WHEREAS**, the interim manager shall continue performing the duties of the position until such time as a board of directors is appointed, hires a permanent manager, and that person assumes office; and

**WHEREAS**, the Governor has designated his authority in this matter to Michael K. Smith, Secretary of the AOA; and

**WHEREAS**, John Sayles, DPS deputy commissioner, has been appointed by the Secretary of Administration to fill the interim manager position; and

**WHEREAS**, the DPS Commissioner and the Secretary of the AOA agree that it is in the best interest of the State, the DPS and the VHPA to allow John Sayles to share the positions of VHPA interim manager and DPS deputy commissioner on a time-as-needed basis.

**NOW, THEREFORE**, it is hereby agreed by and between the parties as follows:

1. **Sharing of Position.** John Sayles, DPS deputy commissioner, shall be a shared employee between the DPS and the VHPA on a time-as-needed basis.
2. **Duration; Renewal.** This agreement shall continue until the earliest of the following: the VPHA ceases to exist; Mr. Sayles is replaced as interim manager at the AOA Secretary's discretion; the VHPA hires a permanent

manager and that person takes office; or January 1, 2005. This agreement may be renewed by written agreement of the parties.

3. **Funding.** Funding for salary, benefits, office space, supplies, equipment and support (including telephone and computer) shall be provided by the DPS. Expenses related to DPS deputy commissioner duties, including in-state and out-of-state travel, shall be funded by DPS. Expenses related to VHPA interim manager duties, including any additional compensation to the interim manager, in-state and out-of-state travel, and consultant fees shall be funded by the VHPA.
4. **Additional Compensation.** The VHPA may provide reasonable compensation to the interim manager, in addition to any salary and benefits funded by the DPS.
5. **Travel and Expense Approval.** The DPS shall approve all DPS-related travel and expenses. The Secretary of Administration shall approve all VHPA-related travel and expenses.
6. **Office Location.** The VHPA interim manager shall be located within the DPS.
7. **Duties.** Duties shall be performed for all functions as-needed. At a minimum, DPS duties will include all personnel officer-related functions, all existing administrative functions performed by the deputy commissioner, including budgeting and legislative relations, and participation as a member of the Vermont radiological response team. VHPA interim manager duties shall be those set forth in 30 V.S.A. Chapter 90.

SECRETARY OF ADMINISTRATION

DEPARTMENT OF PUBLIC SERVICE

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Michael K. Smith  
Secretary of Administration

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David O'Brien  
Commissioner

June \_\_, 2004

June \_\_, 2004